

DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 08-0379
Sales and Use Tax
For Tax Years 1996-2004

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

I. Sales and Use Tax: Study Guides

Authority: IC § 6-8.1-5-1(c); IC § 6-2.5-2-1; IC § 6-2.5-4-1; IC § 6-2.5-4-1(c)(2); IC § 6-2.5-1-27; Indiana Dep't of State Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983).

STATEMENT OF FACTS

The taxpayer provides educational services and materials. The taxpayer is an independent educational publisher and research company, and not affiliated or otherwise connected with any university or college. Taxpayer's brochure states that taxpayer is one of the nation's leading publishers of college course study guides. Taxpayer's customer base consists primarily of nursing students attempting to complete courses at their own pace from home.

Taxpayer did not collect sales tax on its sale of study guides to its customers during the subject tax years. The Indiana Department of Revenue (Department) audited the Taxpayer for the years 1996-2004. As a result of the audit, the Department determined that taxpayer should have collected sales tax attributable to taxpayer's study guide sales. The Department sent taxpayer notices of "Proposed Assessment." Taxpayer disagreed with the basis for the assessments and submitted a protest to that effect. An administrative hearing was held in which taxpayer explained the basis for its protest, and this Letter of Findings results.

DISCUSSION**I. Sales and Use Tax: Study Guides**

Taxpayer argues that it offers an educational service because in addition to the study guides, taxpayer offers academic advisors, tutors if requested, help with student transcripts, introduction to schools, assistance in completion of degrees, help with securing student financing, and many other educational services. Taxpayer argues that the material cost of the study guides makes up a very small percentage of the study guides' purchase price.

Tax assessments are presumed to be accurate. IC § 6-8.1-5-1(c). The Taxpayer bears the burden of proving that any assessment is incorrect. Id. All exemptions are to be strictly construed against the Taxpayer. Indiana Dep't of State Revenue v. Cave Stone, Inc., 457 N.E.2d 520 (Ind. 1983).

Indiana imposes a sales tax on the transfer of tangible personal property in a retail transaction. IC § 6-2.5-2-1, IC § 6-2.5-4-1. The latter statute also provides that "[f]or purposes of determining what constitutes selling at retail, it does not matter whether... (2) the property is transferred alone or in conjunction with other property or services." IC § 6-2.5-4-1(c)(2). Taxpayer's study guides, as items that can be "seen, weighed, measured, felt, or touched" fall within the statutory definition of "tangible personal property." IC § 6-2.5-1-27.

During the hearing, the Department requested more documentation regarding taxpayer's transactions with customers. Taxpayer provided copies of purchase agreements, which state just under the spaces provided for a customer's personal and contact information "This Agreement is for the purchase of the Study Guides listed below." Customers check the box next to each study guide subject title, and agree to pay a sum certain representing the cost of each study guide, multiplied by the number of study guides chosen. The purchase agreement does not include any language describing, documenting charges for, or otherwise providing for, any of the services taxpayer alleges. The purchase agreement does include a statement that the taxpayer specializes in the research, development, and distribution of reference materials and study materials. None of the documents indicate the payment of sales tax in conjunction with these transactions. Taxpayer did not sustain its burden of proving that its sale of study guides represents a transaction that is exempt from sales tax.

FINDING

The Taxpayer's protest is respectfully denied.

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